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WELLS FARGO BANK, N.A. (sued as "Wells Fargo Bank")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PATRICK PIERCE,

Plaintiff,

v.

WELLS FARGO BANK, and Does 1-10,
inclusive,

Defendant.

Case No. CV 08 1554 JF

**[PROPOSED] ORDER GRANTING
DEFENDANT WELLS FARGO
BANK, N.A.'S MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 12(B)(6)**

Date: June 6, 2008
Time: 9:00 a.m.
Courtroom: 3, Fifth Floor
The Honorable Jeremy Fogel

1 The motion of Defendant Wells Fargo Bank, N.A. ("Defendant") to dismiss, pursuant to
2 Federal Rule of Civil Procedure 12(b), the Complaint filed by Plaintiff Patrick Pierce ("Plaintiff")
3 without leave to amend, came regularly for hearing on June 6, 2008 at 9:00 a.m. before the
4 Honorable Jeremy Fogel in Courtroom 3 of the above-entitled Court. Joseph C. Liburt and Greg
5 J. Richardson appeared as counsel for Defendant and Stuart Clark appeared as counsel for
6 Plaintiff.

7 Upon consideration of the moving and opposition papers, the pleadings in this action, the
8 arguments of counsel, and all other matters presented, it appears and this Court finds, pursuant to
9 Federal Rule of Civil Procedure 12(b), that the entire Complaint filed by Plaintiff, including the
10 First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action contained
11 therein, is dismissed with prejudice on the grounds that: (1) Plaintiff has failed to state a claim on
12 which relief can be granted; (2) each of Plaintiff's claims is preempted by the Employee
13 Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*; (3) Plaintiff has
14 failed to exhaust his administrative remedies under ERISA; and (4) Plaintiff has failed to sue the
15 correct defendant.

16 IT IS THEREFORE ORDERED THAT DEFENDANT WELLS FARGO BANK, N.A.'S
17 MOTION TO DISMISS, PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE
18 12(B)(6), IS GRANTED AND PLAINTIFF PATRICK PIERCE'S COMPLAINT IS
19 DISMISSED WITH PREJUDICE.

20 **IT IS SO ORDERED.**

21 Dated: June __, 2008

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23 THE HON. JEREMY FOGEL
24 UNITED STATES DISTRICT JUDGE
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